

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

EMA ELECTROMECHANICS, INC. §
§
Plaintiff, §
§
v. § **CIVIL ACTION NO. 6:21-CV-206**
§
§
SIEMENS CORPORATION, AND
SIEMENS INDUSTRY, INC., §
§
Defendants. §

COMPLAINT

Plaintiff, EMA Electromechanics, Inc. f/k/a EMA Electromechanics, LLC, complains of Defendants, Siemens Corporation and Siemens Industry, Inc., and will respectfully show the Court the following:

PARTIES

1. Plaintiff, EMA Electromechanics, Inc. (“EMA”), is a Texas corporation having its principal place of business in Sweetwater, Texas.

2. Defendant, Siemens Corporation, is a Delaware corporation with its United States operations headquartered in Washington, D.C., and may be served with process by service on its registered agent, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, TX 75201-3136. Siemens Corporation is registered to do business in the State of Texas and regularly transacts business in the State of Texas. Siemens Corporation also is the parent company of Siemens Industry, Inc.

3. Defendant, Siemens Industry, Inc., is a Delaware corporation that is a subsidiary of Siemens Corporation, and has its principal registered place of business listed as c/o Siemens Corp., 170 Wood Avenue South, Iselin, New Jersey 08830-2741. Siemens Industry, Inc. may be

served with process by service on its registered agent, CT Corp System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201-3136. Siemens Industry, Inc. is registered to do business in the State of Texas and regularly transacts business in the State of Texas.

JURISDICTION & VENUE

4. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has jurisdiction under 35 U.S.C. §§ 271, *et. seq.*, and 28 U.S.C. §§ 1331 and 1338.

5. This Court has specific and general personal jurisdiction over Siemens pursuant to TEX. CIV. PRAC. & REM. CODE ANN. § 17.041, *et. seq.*, due to its substantial business presence in the State of Texas, having offices throughout the state, and maintaining regular and established places of business within the District, including at 311 S. Martin Luther King, Jr. Blvd. Waco, Texas 76704.

6. Venue is proper in this Court under 28 U.S.C. §1391 (b) and (c) and 28 U.S.C. §1400(b).

THE PATENT-IN-SUIT

7. On May 25, 2010, United States Patent No. 7,724,489 (the “‘489 Patent”), entitled “Circuit Breaker with High Speed Mechanically-Interlocked Grounding Switch,” was duly and legally issued by the United States Patent and Trademark Office to Eduardo Montich. A true and correct copy of the ‘489 Patent is attached hereto as Exhibit A and incorporated herein for all purposes.

8. Eduardo Montich assigned the ‘489 Patent to EMA Electromechanica S.A. on August 14, 2007. EMA Electromechanica S.A. later assigned the ‘489 Patent to Logan Knapp on October 3, 2008. Logan Knapp subsequently assigned the ‘489 Patent to EMA on December 16, 2011. EMA owns all right, title and interest in and to the ‘489 Patent. EMA has used the ‘489

Patent technology to make and sell its VDH/GSMI® product that combines a vacuum circuit breaker with a high speed, mechanically interlocked grounding switch within the same outdoor enclosure, and totally replaces traditional use of grounding transformers in wind generation installations.

FACTS

9. EMA was originally founded in 1952 in Buenos Aires, Argentina, and became one of the most important manufacturers of electromechanical equipment in Latin America. Product innovation and continuous growth in the electrical market led EMA's expansion into the U.S. market. EMA is the owner by assignment of the '489 Patent. EMA's president, Eduardo Montich, is the inventor of the '489 Patent.

10. EMA is the designer and manufacturer of the VDH/GSMI® combined 38 kV outdoor circuit breaker and high speed, mechanically interlocked grounding switch, a unique and patented system specifically designed for switching and ground of wind and solar energy collection circuits which incorporates the high speed mechanically-interlocked ground switch patented technology disclosed and claimed in the '489 Patent.

11. The first VDH/GSMI® product went online at the Camp Springs wind farm in North Texas in 2008. By the end of 2020, approximately 2,000 VDH/GSMI® units were in service in the United States, with nearly 350 units going online in 2020 alone. As of December 31, 2020, approximately 39% of the US wind fleet (48GW of 122 GW) runs with EMA's VDH/GSMI® products.

12. Siemens Corporation is a U.S. subsidiary of Siemens AG, a technology company that is active in nearly all countries of the world, focusing on the areas of automation and digitalization in the process and manufacturing industries, intelligent infrastructure for buildings and distributed energy systems, among others. Siemens Corporation operates throughout the

United States and within the State of Texas, including in this District. Siemens Industry, Inc. is the successor by merger of Siemens Energy & Automation, Inc. and Siemens Building Technologies, Inc. and remains a subsidiary of Siemens Corporation.

13. On September 30, 2020, Siemens Corporation issued a press release announcing the expansion of its outdoor distribution circuit breaker product line to include its new type SDV-R™ non-arc resistant and type SDV-A-AR™ arc-resistant medium-voltage outdoor distribution circuit breaker products specifically for renewable energy applications, such as wind and solar power generation. As with EMA's VDH/GSMI® circuit breaker product, Siemens' SDV-A-AR™ and SDV-R™ circuit breaker products have an integral "fast-acting grounding switch, which is mechanically interlocked with the circuit breakers to help limit transient voltage excursions to very low levels during switching operations." A true and correct copy of instruction manual for the Siemens' SDV-R™ and SDV-A-AR™ products is attached hereto as Exhibit B and incorporated herein for all purposes.

14. Upon information and belief, Siemens' SDV-R™ and SDV-A-AR™ products that are marketed, sold, installed, and used in the United States are made in Mexico.

15. Siemens Corporation and Siemens Industry, Inc. directly and/or through intermediaries, made, has made, used, imported into the United States, provided, supplied, distributed, sold, and/or offered for sale the SDV-A-AR™ and SDV-R™ products that infringe one or more claims of the '489 Patent, including at least claims 1-9 and 17-20, within this District and elsewhere in the United States.

16. Siemens' SDV-R™ and SDV-A-AR™ products, when installed and/or used in their intended manner or as designed, infringe – at least- claims 10-16 of the '489 Patent, and Siemens Corporation and Siemens Industry, Inc. are therefore liable for infringement of the '489 Patent.

17. By making, using, importing, offering for sale, and/or selling such products, and all like products, Siemens Corporation and Siemens Industry, Inc. have injured EMA and is thus liable for infringement of the ‘489 Patent pursuant to 35 U.S.C. § 271.

18. The Siemens’ SDV-R™ and SDV-A-AR™ products are designed for use in the wind and solar power generation applications and use without EMA’s permission the patented technologies disclosed and claimed in the ‘489 Patent. Siemens has been aware of EMA’s ‘489 Patent since at least September of 2020, when it began marketing the infringing products, but nonetheless proceeded to market and sell their competing products to EMA’s customers and others in the wind and solar power generation market.

19. In the alternative, because the manner of the use by Siemens Corporation and Siemens Industry, Inc. differs in no substantial way from the language of the claims, if Siemens Corporation and Siemens Industry, Inc. are found not to literally infringe, they infringe under the doctrine of equivalents.

CAUSES OF ACTION

COUNT I –INFRINGEMENT OF THE ‘489 PATENT

20. EMA repeats and realleges each of the allegations of paragraphs 1-19 as if set forth in full herein.

21. Siemens Corporation and Siemens Industry, Inc. has infringed and continued to infringe the ‘489 Patent by making, selling, offering for sale, and using products and/or services covered by the claims of the ‘489 Patent within the United States, without EMA’s authorization in violation of 35 U.S.C. § 271(a).

22. Siemens Corporation and Siemens Industry, Inc. have in the past marketed and sold and continues to market and sell their products/services that infringe on the ‘489 Patent.

23. Siemens Corporation and Siemens Industry, Inc.’s actions have constituted and

continue to constitute active inducement of and contributory infringement of the '489 Patent.

24. Siemens Corporation and Siemens Industry, Inc. had actual knowledge of the '489 Patent, and despite notice, has continued to engage in acts of infringement of the '489 Patent. Siemens Corporation and Siemens Industry, Inc.'s continued acts of infringement have been, and will continue to be, wanton and willful.

25. Siemens Corporation and Siemens Industry, Inc.'s infringing activities have damaged and continue to damage EMA. Upon information and belief, Siemens Corporation and Siemens Industry, Inc. will continue to infringe the '489 Patent, causing irreparable harm to EMA unless enjoined by this Court. EMA is in compliance with 35 USC § 287.

REQUEST FOR JURY TRIAL

26. Pursuant to Fed. R. Civ. P. 38, EMA demands a trial by jury of any issue triable of right by a jury.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, EMA Electromechanics, Inc., prays for relief against Siemens Corporation and Siemens Industry, Inc., as follows:

- (a) That the '489 Patent be adjudged infringed by Siemens Corporation and Siemens Industry, Inc. and that the infringement be held to be willful;
- (b) That EMA be awarded compensatory damages for past infringement of the '489 Patent by Siemens Corporation and Siemens Industry, Inc., in an amount no less than its actual damages, including lost profits, in an amount to be determined at trial, and that said damages be trebled in view of the willful and deliberate nature of the infringement;
- (c) That EMA be awarded pre-judgment and post-judgment interest and costs;
- (d) That Siemens Corporation and Siemens Industry, Inc., and their officers, agents, servants, employees and attorneys, and other persons in active concert or participation with them,

be preliminarily and permanently enjoined and restrained from making, importing, using, offering for sale, selling, or causing to be sold any product falling within, or designed to conduct a method falling within, the scope of any claim of the '489 Patent, or otherwise infringing or contributing to or inducing infringement of any claim of the '489 Patent;

(e) That Siemens Corporation and Siemens Industry, Inc., be ordered to deliver to EMA for destruction all infringing products and systems in its possession;

(f) That this case be declared an exceptional case under 35 U.S.C. § 285 as to Siemens Corporation and Siemens Industry, Inc., and that EMA be awarded its attorneys' fees incurred in this action, and such other and further relief to which it may be justly entitled.

Respectfully submitted,

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